HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
and
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.20840 OF 2007

Between:

K. Naganna and another

.....Petitioners

AND

State Bank of India, Commercial Branch,
Rep., by its Branch Manager, S.P. Road,
Secunderabad and another

.....Respondents

::ORDER::

Counsel for the petitioners : Shri Vedula Srinivas

Counsel for respondent No.1 : Shri Deepak Bhattacharjee

October 11, 2007

Per G.S. Singhvi, CJ

This is a petition for setting aside order 21-9-2007 passed by Debts Recovery Appellate Tribunal, Chennai (for short, 'the Appellate Tribunal') in I.A No. 943 of 2007 in R.A No. 2 of 2005.

M/s. Monarch Cyber Solutions Ltd., (for short, 'the company') of which petitioner No.1 was the Chairman and his wife (petitioner No.2) and son were the Directors, availed financial assistance to the tune of Rs.50,00,000/- from the State Bank of India (for short, 'the bank'). Due to failure of the company to repay the loan, the bank filed O.A.No.554 454 of 2000 before the Debts Recovery Tribunal at Hyderabad (for short, 'the Tribunal') for recovery of Rs.71,36,822/-. The company and the guarantors including the petitioners herein were impleaded as defendants. By an order dated 30-11-2004, the Tribunal decreed the O.A. against the company, but dismissed the same against the petitioners and their son.

Dissatisfied with the decree passed by the Tribunal, the bank filed an appeal before the Appellate Tribunal, which was registered as R.A.No.2 of 2005. By an order dated 9-8-2005, the Appellate Tribunal set aside the order of the Tribunal insofar as it related to the petitioners, their son and other guarantors and passed a decree against them as well.

After one year and twenty days of the disposal of the appeal, the petitioners and their son filed interlocutory applications for setting aside the appellate order and also for condonation of delay. They also applied for suspending the execution of the appellate order. By an

order dated 21-9-2007 passed in I.A.No.941 of 2007, the Appellate Tribunal condoned the delay subject to payment of costs of Rs.2,500/-. By another order of the same date, the Appellate Tribunal stayed the decision of R.A. No.2 of 2005 subject to the condition of deposit of Rs.31,00,000/- by the petitioners. The operative part of that order reads as under:

> "There will be interim stay of the order in RA-2/2005 dated 9-8-2005 on condition of deposit of Rs.31,00,000/- (Rupees Thrityone lakhs only) by the petitioners with the respondent Bank, of which, Rs.1/- lakh to be paid on or before 25-9-2007 towards the auction charges and the balance amount of Rs.30 lakhs shall be paid in two equal instalments, each at Rs.15 lakhs, 1st on or before 22-10-2007 and the 2nd one on or before 22-11-2007. On such deposit, the respondent Bank is hereby directed to keep the amount deposited in interest bearing no-lien account."

In this petition, the petitioners have challenged the aforementioned order by contending that condition incorporated therein is extremely onerous, oppressive and unreasonable. In the affidavit filed by petitioner No.1, it has been averred that order dated 9.8.2005 passed by the Appellate Tribunal is liable to be quashed because they were not served with the notice and, therefore, the same should have been stayed unconditionally.

Notice of the writ petition was issued on 4.10.2007. Shri Deepak Bhattacharjee, Standing Counsel for the State Bank of India accepted the same.

Today, Shri Deepak Bhattacharjee gave out that a sum of Rs.2,43,00,000/- and odd is payable by the borrower. He submitted that the writ petitioners are guarantors and, therefore, the bank is entitled to recover its dues by resorting to the provisions contained in Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') and other contemporaneous statutes.

Shri V. Srinivas, learned counsel for the petitioners candidly stated that his clients are directly connected with the company, but submitted that they could not have been condemned by the Appellate Tribunal without being afforded opportunity of hearing. Learned counsel emphasized that neither of the petitioners had been served with the notice of R.A No. 2 of 2005 and argued that order dated 9.8.2005 is liable to be annulled on the ground of violation of rules of natural justice.

We have considered the respective submissions. Since the matter is pending adjudication before the Appellate Tribunal, we do not consider it proper to express opinion on the merits of the petitioners' plea of denial of opportunity of hearing, but keeping the same in view, we feel that ends of justice will be met by reducing the amount specified in the order under challenge from Rs.31,00,000/- to Rs.20,00,000/- payable in two equated instalments.

Hence, the writ petition is disposed of in the following terms:

1) The amount specified in the order under challenge is reduced from Rs. 31,00,000/- to Rs.20,00,000/-. The petitioner shall now deposit Rs. 20,00,000/- in two equated instalments as a condition for continuation of the interim order passed by the Appellate Tribunal. The first instalment shall be deposited on or before 5-11-2007 and the second instalment shall be deposited by 31-12-2007.

2) If the petitioners commit default in deposit of either of the instalments, this order as also the one passed by the Appellate Tribunal shall automatically stand vacated.

G.S.SINGHVI, C.J.

C.V.NAGARJUNA REDDY, J.

October 11, 2007

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